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No. 111, Original

In the
Supreme Court of the United States.

October Term, 1991

STATE OF DELAWARE,
Plaintiff,
STATE OF TEXAS,
Plaintiff-Intervenor,
COMMONWEALTH OF MASSACHUSETTS,
Applicant for Intervention,

v.

STATE OF NEW YORK,
Defendant.

MOTION OF THE COMMONWEALTH OF MASSACHUSETTS FOR LEAVE TO FILE COMPLAINT IN INTERVENTION AND COMPLAINT IN INTERVENTION

COMMONWEALTH OF MASSACHUSETTS
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March, 1992

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MOTION OF THE COMMONWEALTH OF MASSACHUSETTS FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

Pursuant to Rule 17 of the Rules of the Supreme Court, the Commonwealth of Massachusetts (hereinafter "Massachusetts"), a sovereign state of the United States of America, by and through its Attorney General, moves this

Court for an order permitting it to intervene in the above-entitled case for the purpose of sharing in any remedy fashioned by this Court and permitting it to file its Complaint in Intervention, attached hereto. In support of this motion, and as more fully set forth in Massachusetts' Brief in Support of Motion for Leave to File Complaint in Intervention, Massachusetts alleges as follows:

I.

1. On May 31, 1988, this Court granted Plaintiff State of Delaware's ("Delaware") Motion for Leave to File a Complaint invoking the original jurisdiction of the Court to resolve a controversy between Delaware and the State of New York ("New York") regarding

which State is entitled to claim and take possession of certain unclaimed intangible property held by securities brokerage firms incorporated in Delaware.

2. On December 12, 1988, the Court appointed Thomas H. Jackson, Esquire as Special Master in this case.

3. On February 21, 1989, the Court granted the State of Texas' motion to file a complaint in intervention.

4. On various dates the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma,

Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and the Commonwealths of Kentucky, Virginia and Pennsylvania as well as the District of Columbia have filed motions to intervene in this matter.

5. On January 28, 1992, the Special Master issued a report with his recommendations to the Supreme Court. The Master recommended that all applications for intervention filed prior to the Supreme Court's final decree be granted.

6. Massachusetts' motion is timely in light of all the circumstances. Intervention by Massachusetts will not delay the progress of this case.

7. As set forth in the attached proposed Complaint in Intervention, Massachusetts seeks to share in any remedy fashioned by this Court in this action and seeks a determination of its right to certain unclaimed intangible personal property held by the State of New York pursuant to any relief granted by this Court.

8. The decision of the Court in this action may determine the right of Massachusetts to claim and take possession of certain unclaimed intangible personal property.

9. Massachusetts' interests are not adequately represented by Delaware, Texas or the other intervening states because neither Delaware, Texas nor the other intervening states can be expected

to identify, advocate and protect the rights of Massachusetts for the following reasons: (i) none of the other parties to the suit have any incentive to identify the property held by New York which may belong to Massachusetts; and (ii) Massachusetts' claims are based on its abandoned property statute, which neither Delaware, Texas nor the other intervening states can have sufficient familiarity so as to adequately represent the interests of Massachusetts.

10. For the foregoing reasons, Massachusetts is entitled to intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure.

II.

11. Alternatively, Massachusetts requests this Court to exercise its discretion and allow intervention pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure.

12. A determination of Massachusetts' claims to the unclaimed intangible property involved in this case involves questions of law or fact common to those already before the Court.

13. Massachusetts' intervention will aid in the resolution of factual issues and the application of the law to the facts.

14. Massachusetts' intervention will not unduly delay or prejudice the adjudication of the rights of the parties to this action.

15. Massachusetts' intervention will avoid a multiplicity of lawsuits by obviating the need for Massachusetts to file a separate action against New York, thus expediting the ultimate resolution of the entire controversy and promoting judicial economy and efficiency.

16. For the foregoing reasons, Massachusetts should be allowed permissive intervention pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure.

III.

17. Wherefore, Massachusetts prays that its Motion for Leave to File Complaint in Intervention for Purposes

of Sharing in Any Remedy Fashioned by this Court be granted.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
SCOTT HARSHBARGER
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Dated: March 31, 1992

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COMPLAINT IN INTERVENTION BY THE COMMONWEALTH OF MASSACHUSETTS

I. JURISDICTION

1. This Court has original jurisdiction over the present parties pursuant to Article III, Section 2, and Section 1251(a) of Title 28 of the U.S. Code.

II. THE PENDING ACTION

2. On May 31, 1988, the Court granted the State of Delaware leave to bring this action against the State of New York to resolve a controversy between Delaware and New York regarding which state is entitled to claim and take possession of certain unclaimed intangible property ("excess receipts"). These excess receipts consist of dividends, interest, and other distributions arising out of security transactions that are held by securities brokers incorporated in Delaware.

3. On December 12, 1988, the Court appointed a special master for the dispute.

4. On February 21, 1989, the Court granted the State of Texas' motion to

file a complaint in intervention that broadened the property in dispute to include dividends, interest, and other distributions ("additional excess receipts") held by Depository Trust Corporation or Cede & Co., which have not been claimed by brokerage and bank members of the Depository Trust Co.

5. Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington,

West Virginia, Wisconsin, Wyoming and the District of Columbia have filed motions to intervene accompanied by complaints in intervention. Some of these complaints would expand the scope of litigation to include unclaimed intangible property held by all brokerage firms, wherever incorporated.

6. On January 28, 1992, the Special Master issued a report with his recommendations to the Supreme Court. The Master recommended that all applications for intervention filed prior to the Supreme Court's final decree be granted.

III. THE COMMONWEALTH OF MASSACHUSETTS

7. The Commonwealth of Massachusetts in this action acts by and through the Attorney General of

Massachusetts, the official of the Commonwealth of Massachusetts exclusively authorized under the laws of the Commonwealth to represent the Commonwealth in litigation. Mass. Gen. Laws c. 12, § 3.

IV. CLAIM BY THE COMMONWEALTH OF MASSACHUSETTS

8. Under the principles of law enunciated in Texas v. New Jersey, 379 U.S. 674 (1965), and Pennsylvania v. New York, 407 U.S. 206 (1972), the Commonwealth of Massachusetts is entitled to share in any remedy fashioned by the Supreme Court in this case and to claim an undetermined portion of excess receipts and additional excess receipts held by the State of New York pursuant to any ruling of this Court in this case.

9. **WHEREFORE**, the Commonwealth of Massachusetts requests:

a. that the Commonwealth of Massachusetts be allowed to intervene herein;

b. for a judgment that portion of excess receipts and additional excess receipts to which the Commonwealth of Massachusetts is entitled by its Abandoned Property Act and other applicable principles of law;

c. for a judgment against the State of New York for excess receipts and additional excess receipts to which the Commonwealth of Massachusetts has been entitled but that have previously been seized by the State of New York, plus interest at the prevailing rate; and

d. for such further relief as this Court deems just.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
SCOTT HARSHBARGER
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Dated: March 31, 1992

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